STATE OF MINNESOTA
IN COURT OF APPEALS
A19-2034

State of Minnesota,
Respondent,

vs.

Michael Allen Boisjolie,
Appellant.

Filed November 30, 2020
Affirmed
Larkin, Judge

Carver County District Court
File No. 10-CR-19-640

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Mark A. Metz, Carver County Attorney, Angella M. Erickson, Assistant County Attorney, Chaska, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jessica Merz Godes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Larkin, Judge; and Bjorkman, Judge.

U N P U B L I S H E D O P I N I O N

LARKIN, Judge

A jury found appellant guilty of violating a domestic-abuse no-contact order (DANCO). Appellant contends that the evidence was insufficient to sustain the resulting conviction. We affirm.

FACTS

The state charged appellant Michael Allen Boisjolie with a felony-level DANCO violation, alleging that he violated the DANCO within ten years of two or more qualifying convictions. According to the complaint, Boisjolie violated the DANCO by contacting the protected party, T.J., by phone from jail.

The case was tried to a jury. Boisjolie stipulated to the existence of his prior qualifying convictions. A bailiff testified about his duties, which included serving individuals with DANCOs in court. He testified that he "normally" explained the DANCO to the person being served by identifying "the protected party" and asking whether the person "understood what the judge had ordered." The bailiff testified that the person being served received "a copy" of the DANCO.

The bailiff testified that he served Boisjolie on April 3, 2019. A copy of the DANCO served on Boisjolie was admitted into evidence. It was initialed and indicated that it was served on April 3, 2019. The bailiff identified the initials as his own. The DANCO prohibited Boisjolie from contacting T.J. and expressly prohibited contact by phone.

A sergeant testified that Boisjolie was in jail on April 4, 2019, and someone made a call that day from the jail using Boisjolie's pin number. A recording of the call was admitted into evidence.

T.J. testified that she was at home on April 4 with a friend, when the friend received a call from Boisjolie from jail. The friend "put [T.J.] on the phone," and she spoke with Boisjolie. T.J. identified her voice and Boisjolie's voice on the recording. T.J. did not report the DANCO violation because she did not want Boisjolie to get in trouble.

During the call from jail, Boisjolie initially spoke with an unknown male. The unknown male asked Boisjolie if he wanted to speak to a "friend of ours," and Boisjolie said that he did. Boisjolie then spoke with T.J. He told her that he wanted to see her "real bad" and discussed the possibility of staying at her house. T.J. responded, "I don't think it's a good idea that you stay here," and told him repeatedly that he will "go back." Boisjolie then agreed that he could not stay at T.J.'s house.

The jury returned a guilty verdict. The district court sentenced Boisjolie to serve 39 months in prison. This appeal followed.

D E C I S I O N

In considering a challenge to the sufficiency of the evidence to sustain a conviction, we carefully analyze the record to determine whether the evidence, viewed in a light most favorable to the conviction, was sufficient to permit the jury to reach its verdict. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). We "assume that the jury believed the state's witnesses and disbelieved contrary evidence." *State v. Brocks*, 587 N.W.2d 37, 42 (Minn. 1998). We will not disturb a guilty verdict if the jury, acting with due regard for the

presumption of innocence and requirement of proof beyond a reasonable doubt, could reasonably have concluded that the state proved the defendant's guilt. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

When the state relies on circumstantial evidence to prove an element of an offense, we apply a heightened standard of review. *See State v. Harris*, 895 N.W.2d 592, 601-03 (Minn. 2017) (applying circumstantial-evidence standard to individual element of criminal offense that was proved by circumstantial evidence). Circumstantial evidence is "evidence from which the factfinder can infer whether the facts in dispute existed or did not exist." *Id.* at 599 (quotation omitted). "In contrast, direct evidence is evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption." *Id.* (quotation omitted).

A person is guilty of violating a DANCO if the person "knows of the existence" of the DANCO "issued against the person" and violates the order. Minn. Stat. § 629.75, subd. 2(b) (2018). The offense is a felony if committed "within ten years of the first of two or more previous qualified domestic violence-related offense convictions." *Id.*, subd. 2(d)(1) (2018). Knowledge may be proved by circumstantial evidence "that an individual was served with" a protective order with terms "clearly and unambiguously prohibit[ing] certain conduct." *State v. Gunderson*, 812 N.W.2d 156, 161 (Minn. App. 2012).

The sole issue in dispute is whether the state proved that Boisjolie knew of the existence of the DANCO when he contacted T.J. The parties agree that the circumstantial-evidence standard of review is applicable. Under that standard, we use a two-step process. *Harris*, 895 N.W.2d at 601. First, we identify the circumstances proved, "disregard[ing]

evidence that is inconsistent with the jury's verdict." *Id.* Next, we "determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis other than guilt." *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017) (quotation omitted). We do not defer to the jury's choice between reasonable inferences. *State v. Silvernail*, 831 N.W.2d 594, 599 (Minn. 2013). But we will reverse a conviction based on circumstantial evidence only if there is a reasonable inference other than guilt. *Loving*, 891 N.W.2d at 643.

Here, the circumstances proved are that the bailiff served Boisjolie with the DANCO the day before the alleged violation. The bailiff "normally" explained DANCOs when serving them. The DANCO prohibited Boisjolie from contacting T.J. by phone. Boisjolie contacted T.J. by phone. During the call, Boisjolie discussed the possibility of staying with T.J., but he ultimately agreed with her that it was a bad idea because he would "go back." In sum, Boisjolie received the DANCO, and his statements during the phone call indicated that he understood the repercussions of violating the order. These circumstances are consistent with Boisjolie's knowledge of the existence of the DANCO and his guilt.

Boisjolie argues that "[i]t is not reasonable to infer from the circumstances proved that [he] knew of the existence of the DANCO when he violated it" because "the state offered no evidence about the circumstances under which the DANCO was issued and 'served,' and no evidence that [he] understood or knew the order served upon him was a 'DANCO.'"

"To successfully challenge a conviction based upon circumstantial evidence, a defendant must point to evidence in the record that is consistent with a rational theory other than guilt." *State v. Taylor*, 650 N.W.2d 190, 206 (Minn. 2002). A defendant may not rely on mere conjecture or speculation, but must instead point to specific evidence that supports his theory. *State v. Al-Naseer*, 788 N.W.2d 469, 480 (Minn. 2010); *State v. Tscheu*, 758 N.W.2d 849, 858 (Minn. 2008). "[A] defendant is not relying on conjecture or speculation when the defendant . . . points to evidence in the record that is consistent with a rational theory other than guilt." *Al-Naseer*, 788 N.W.2d at 480 (quotation omitted).

Boisjolie does not point to evidence in the record that is consistent with his theory of innocence. Instead, he points to the lack of evidence regarding whether the DANCO "was issued in accordance with statutory procedures," and "how or where the DANCO was issued, whether Boisjolie was present when it was issued, or what, if anything Boisjolie was told about the DANCO when it was issued." Boisjolie points out that "there was no evidence that [he] acknowledged receiving the DANCO and understanding what it was." Boisjolie concludes that the absence of evidence "is wholly consistent" with his innocence.

Boisjolie's complete reliance on an absence of evidence to establish a rational theory other than guilt is unavailing. *Cf. Harris*, 895 N.W.2d at 602-03 (concluding there was a rational hypothesis of innocence based on record evidence in addition to an absence of evidence). The caselaw is clear: a defendant must point to evidence in the record that is consistent with a rational theory other than guilt. *Taylor*, 650 N.W.2d at 206. Boisjolie's approach relies on conjecture or speculation and is therefore unavailing. *See Al-Naseer*, 788 N.W.2d at 480 (stating that a defendant may not rely on speculation).

Because the circumstances proved are consistent with Boisjolie's guilt and inconsistent with any rational hypothesis other than guilt, we affirm.

Affirmed.